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U.S. DISTRICT COURT
W.D.N.Y. BUFFALO

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

2006 MAR 23 AM 11:11

CORNELIUS JOHNSON, #43730806,

Petitioner,

-v-

06-CV-0155E(Sc)

ORDERWILLIAM CLEARY, ICE, and
CHARLES MULE, DHS,Respondents.

Petitioner Cornelius Johnson, who is currently detained at the Buffalo Federal Detention Facility pursuant to an order of removal, challenges his continued detention pending removal and seeks relief pursuant to 28 U.S.C. § 2241 as more fully set forth in the petition. (Docket No. 1). Petitioner also seeks permission to proceed *in forma pauperis* (Docket No. 2) and a stay of removal pending disposition of the petition. Because this Court has no jurisdiction over any challenges to final orders of removal, REAL ID Act, § 106(b), INA, § 242(a)(5), as amended, 8 U.S.C. § 1252(a)(5), it has no jurisdiction over petitioner's request for a stay of removal and, therefore, petitioner's request for a stay of removal will be dismissed without prejudice. Any further requests for a stay of removal must be filed with the United States Court of Appeals for the Second Circuit.

To the extent that petitioner may be attempting to challenge his final order of removal in the instant petition, this Court has

no jurisdiction to review that and, therefore, any such challenge is dismissed without prejudice to filing of a petition for review in the Second Circuit. See REAL ID Act, § 106(b), INA, § 242(a)(5), as amended, 8 U.S.C. § 1252(a)(5);¹ Walters v. Chertoff, NO. 3:05 CV 01672 RNC, 2005 WL 3416124, *1 (D.Conn. Dec 12, 2005); Flores-Diaz v. U.S., No. 2:05-CV-710 TS, 2005 WL 2456983 (D.Utah, Oct 05, 2005); Griffith v. Dept. of Homeland Security, 2005 WL 2338866 *1 (W.D.N.Y., September 3, 2005). Accordingly, only that part of the petition that challenges petitioner's continued detention pending removal is before the Court for adjudication.

IT HEREBY IS ORDERED as follows:

1. Petitioner's request to proceed as a poor person is granted.
2. Petitioner's request for a stay of removal is denied without prejudice to re-filing in the United States Court of Appeals for the Second Circuit.
3. Within **45 days** of the service of this order, respondent shall file an **answer** to the application with the Clerk of Court (and also serve a copy upon the petitioner) which shall respond to

¹INA, § 242(b)(1), as amended, 8 U.S.C. § 1252(b)(1), provides that "[t]he petition for review must be filed **not later than 30 days** after the date of the final order of removal." (Emphasis added).

The "appropriate court of appeals" in which to file a petition for review challenging a final order of removal is "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." INA, § 242(b)(2), 8 U.S.C. § 1252(b)(2).

the allegations of the application and shall state, as to every ground raised by the petitioner, whether the petitioner has exhausted administrative remedies. If any ground is alleged not to have been exhausted, respondent shall identify such ground. Alternatively, in the appropriate case, respondent may file a motion to dismiss the application, accompanied by pertinent exhibits which demonstrate that an answer to the application is unnecessary, by no later than **45 days** from service of this order.

Respondent also shall file by the above date a **memorandum of law** with the Clerk of Court (and also serve a copy upon the petitioner) addressing each of the issues raised in the petition and including citations of relevant supporting authority. Respondent is directed to accompany all citations to sections of the Immigration and Naturalization Act with reference to the appropriate sections of 8 U.S.C.

Petitioner shall have **25 days** upon receipt of the answer to file a written response to the answer and memorandum of law (or motion to dismiss).

4. The Clerk of Court shall serve a copy of the application, together with a copy of this order, by certified mail, upon the following:

- Buffalo Field Office Director, Detention & Removal Office, Immigration and Customs Enforcement Department of Homeland Security, 138 Delaware Avenue, Buffalo, NY 14202;

- Secretary, U.S. Department of Homeland Security, Washington, D.C. 20528;
- Acting Director, Bureau of Immigration and Custom Enforcement, 425 I Street, NW Washington, DC 20536;
- Attorney General of the United States, Main Justice Building, 10th and Constitution Avenues N.W., Washington, DC 20530;
- United States Attorney for the Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202;
- James W. Grable, District Counsel for the Department of Homeland Security, 130 Delaware Avenue, Room 203, Buffalo, New York 14202.

**THE PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND
CORRESPONDENCE TO THE ATTORNEY APPEARING FOR THE RESPONDENT.**

SO ORDERED.

S/ Michael A. Telesca

MICHAEL A. TELESKA
United States District Judge

Dated: March 22, 2006
Rochester, New York